SUPREME COURT U.S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

NO. 74-1524

FOOD DRIVERS, HELPERS AND WAREHOUSEMEN EMPLOYEES PHILADELPHIA AND VICINITY, AND CAMDEN AND VICINITY, NEW JERSEY, LOCAL 500, *et al.*,

Petitioners

v.

FOX TRANSPORT SYSTEM AND FOX WAREHOUSING AND DISTRIBUTING CO.,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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Petitioners request that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit.

OPINIONS BELOW

The unreported order of the District Court for the Eastern District of Pennsylvania is reprinted at Appendix A, *infra*. The judgment Order of the United States Court of Appeals for the Third Circuit, also unreported, is reprinted at Appendix B, *infra*.

JURISDICTION

The judgment of the Third Circuit was entered on March 10, 1975. This Court has jurisdiction under 28 U.S.C. §1254(1).

QUESTION PRESENTED

Does the *Boys Markets* exception to the Norris-LaGuardia Act authorize an injunction where the conduct sought to be enjoined is in furtherance of a non-arbitrable underlying dispute, and only the right to engage in such activity is claimed to be arbitrable by the party seeking the injunction, and the collective bargaining agreement expressly excepts from the no-strike clause the right to engage in the form of activity which is sought to be enjoined?

STATUTES INVOLVED

This case involves §4 of the Norris-LaGuardia Act, 29 U.S.C. §104, and §301(a) of the Labor Management Relations Act of 1947, 29 U.S.C. §185(a), which are reprinted at Appendix C.

STATEMENT OF THE CASE

1. The Factual Background

Respondent Fox Transport System is a common carrier, occupying a common site with respondent Fox Warehousing (244).[1] The petitioning Union is an unincorporated labor association, representing approximately 145 employees employed by respondents (33-35). Respondents are members of Motor Transport Labor Relations, Inc., a multi-employer bargaining association, and are bound by a collective bargaining agreement with Local 500 known as the National Master Freight Agreement (N.M.F.A.).

The present litigation arises out of a strike by Local 500 against a second carrier, Guerin Special Motor Freight Lines, Inc. Guerin and Local 500 are parties to a separate collective bargaining agreement (49, 51). When respondent Fox Transport undertook the work that Guerin would have handled, Local 500 picketed respondents because they were handling struck goods (39, 50, 77, 84, 110).

Article 9, Section 2 of the N.M.F.A., entitled "struck goods," provides:

> It shall not be a violation of this Agreement and it shall not be cause for discharge or disciplinary action if any employee refuses to perform any service which his employer undertakes to perform as an ally of an employer or person whose employees are on strike, and which service, but for such strikes, would be performed by the employees of the employer or person on strike (176).

The N.M.F.A. also contains, *inter alia*, a grievance and arbitration procedure and a no-strike clause (170, 178).

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1. Unless otherwise indicated, all references are to the Appendix filed in the United States Court of Appeals.

2. Proceedings Below

A. *Proceedings in the District Court*

Fox brought this action, seeking injunctive relief, against Local 500 alleging that the struck goods dispute was arbitrable under the terms of the N.M.F.A. (5). Without finding a violation of the no-strike clause, the district court preliminarily issued a *Boys Markets* injunction,[2] finding that the dispute was arbitrable. (App. A, *infra*)

B. *Proceedings in the Court of Appeals*

Local 500, in its appeal to the Circuit, urged that the Norris-LaGuardia Act precludes an injunction where the underlying dispute is with another employer. The N.M. F.A., governing the Union's conduct with respondents, authorized a work stoppage where the employer acted as an ally by handling struck goods. Notwithstanding, the Third Circuit affirmed the lower court (App. B, *infra*).

2. *Boys Markets, Inc. v. Retail Clerks Union, Local 770*, 398 U.S. 235 (1970).

REASONS FOR GRANTING THE WRIT

The Decision of the Court Below Is an Unwarranted Extension of This Court's Holding in *Boys Markets*, and Is in Conflict With Prior Decisions of the Third Circuit and Other Courts of Appeal.

In *Boys Markets, Inc. v. Retail Clerks Union, Local 770*, 398 U.S. 235 (1970) this Court recognized a limited exception to the Norris-LaGuardia Act to permit an injunction against a work stoppage in violation of a no-strike obligation in a collective bargaining agreement. The limited exception was based upon the congressional policy to promote the peaceful settlement of labor disputes through arbitration. The express principles adopted by this Court in *Boys Markets*, requiring a finding that "breaches are occurring and will continue," preclude the issuance of an injunction unless the strike is in breach of a no-strike obligation. 398 U.S. at 254. Where, as here, the underlying dispute is between the Union and a second employer, and the only arbitrable issue is whether the Local is entitled to take action in furtherance of that dispute, the criteria of *Boys Markets* are not met.

The decision of the Third Circuit in this case, while in harmony with its earlier *en banc* decision in *NAPA Pittsburgh, Inc. v. Automotive Chauffeurs, Parts and Garage Employees, Local Union 926*, 502 F.2d 321 (1974), *cert. denied*, No. 74-419, is in direct conflict with a prior Third Circuit decision and a decision of the Fifth Circuit. *In Parade Publications, Inc. v. Philadelphia Mailers v. No. 14*, 459 F.2d 369 (1972) and *Amstar Corporation v. Amalgamated Meat Cutters and Butcher Workmen*, 468 F.2d 1372 (1972), the Third and Fifth Circuits, respectively, held that *Boys Markets* did not extend to a situation where the only arbitrable issue was the legality of the strike itself. In short, therefore, the holding below "undermines the vitality of the Norris-LaGuardia Act," contrary to *Boys Markets*, 398 U.S. at 253.

CONCLUSION

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX A

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FOX TRANSPORT SYSTEM AND
FOX WAREHOUSING AND DISTRIBUTING CO.

v.

FOOD DRIVERS, HELPERS AND WAREHOUSEMEN
EMPLOYEES PHILADELPHIA AND VICINITY,
AND CAMDEN AND VICINITY, NEW JERSEY,
LOCAL 500; WILLIAM O'FARRELL, VICE-
PRESIDENT

CIVIL ACTION

NO. 74-1542

ORDER

AND NOW, this 19th day of June, 1974, and after a full hearing, having heard the arguments of counsel for the parties, the defendants are restrained from jointly or severally striking, picketing, or engaging in any other form of economic activity against the plaintiff or encourage or direct any others to refuse to work or in any other way violating the collective bargaining agreement between the defendant union and the plaintiffs.

This Order is entered because the testimony indicates that unless the relief is granted, the plaintiffs will sustain irreparable injury. Specifically, it appears that plaintiff Fox Transport, is engaged in the business as a common carrier specializing in the transportation of perishable food stuffs and maintains a terminal at the common site with Fox Warehouse, Inc. and both plaintiffs will suffer substantial losses including the permanent loss of some

customers, and damage which cannot be calculated accurately, if the present strike is permitted to continue.

I find the defendants on the other hand will sustain no substantial damage if the injunction is granted.

This order is being entered also because the Court finds that the work stoppage is over issues which the parties are contractually bound to process through the contractual grievance machinery.

It is entered this day at 5:05 P.M.

All the parties present are charged with notice of this order and we will direct the Marshal to serve a copy.

In addition, the parties are directed to arbitrate.

The $500.00 bond will continue for 24 hours and then plaintiffs shall post a $10,000.00 bond.

BY THE COURT:

/s/ James H. Gorbey
James H. Gorbey, U.S.
District Judge

By /s/ Marguerite L. McCaffrey
Marguerite L. McCaffrey
Deputy Clerk to Judge Gorbey

June 19, 1974

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 74-1857

FOX TRANSPORT SYSTEM AND
FOX WAREHOUSING AND DISTRIBUTING CO.,

v.

FOOD DRIVERS, HELPERS AND WAREHOUSEMEN
EMPLOYEES PHILADELPHIA AND VICINITY,
AND CAMDEN AND VICINITY, NEW JERSEY,
LOCAL 500; WILLIAM O'FARRELL, VICE-
PRESIDENT

Appellants

On Appeal from the United States District Court
for the Eastern District of Pennsylvania

C.A. NO. 74-1542

Submitted under Third Circuit Rule 12(6)

March 5, 1975

Before: ADAMS, ROSENN and WEIS, *Circuit Judges*

JUDGMENT ORDER

After consideration of all the contentions set forth by appellants, it is

ADJUDGED AND ORDERED that the decision of the district court be and is hereby affirmed.

Costs taxed against appellants.

BY THE COURT:

/s/ Arlin M. Adams
Circuit Judge

ATTEST:

/s/ Thomas F. Quinn
Thomas F. Quinn
Clerk

Dated: March 10, 1975

APPENDIX C

Statutory Provisions Involved

Section 4 of the Norris-LaGuardia Act, 47 Stat. 70, 29 U.S.C. §104 provides:

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 3 of this Act;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 3 of this Act.

Section 301(a) of the Labor Management Relations Act of 1947, 61 Stat. 156, 29 U.S.C. §185(a) provides:

Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.